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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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Si

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ADR

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SVK

Case No:

19 04616

Peter Strojnik (Sr.),

Plaintiff,

vs.

Resort at Indian Springs, LLC dba Indian
Springs Resort & Spa

Defendant.

COMPLAINT

1. Americans with Disabilities Act
2. Discrimination in Public Accommodations (State Law)
3. Negligence

JURY TRIAL REQUESTED

1. Plaintiff brings this action pursuant to the (1) Americans with Disabilities Act, 42 U.S.C. §12101 *et seq.* and corresponding regulations, 28 CFR Part 36 and Department of Justice Standards for Accessible Design ("ADA"), (2) California Unruh Civil Rights Act, California Civil Code § 51, 52 ("Unruh") (3) the California Disabled Persons Act ("DPA") and (4) common law of negligence per se.

PARTIES

2. Plaintiff Peter Strojnik is a veteran and a disabled person as defined by the ADA and DPA.
3. Plaintiff is a single man currently residing in Maricopa County, Arizona. Plaintiff is and, at all times relevant hereto has been, legally disabled by virtue of a severe right-sided neural foraminal stenosis with symptoms of femoral neuropathy, prostate cancer and renal cancer, degenerative right knee and is therefore a member of a protected class under the ADA and Unruh.

4. Plaintiff suffers from physical impairments described above which impairments substantially limit his major life activities. Plaintiff walks with difficulty and pain and requires compliant mobility accessible features at places of public accommodation. Plaintiff's impairment is constant, but the degree of pain is episodic ranging from dull and numbing pain to extreme and excruciating agony.

5. Defendant, owns, operates leases or leases to a lodging business ("Hotel") located at 1712 Lincoln Ave., Calistoga, CA 94515 which is a public accommodation pursuant to 42 U.S.C. § 12181(7)(A) and Unruh.

JURISDICTION

6. District Court has jurisdiction over this case or controversy by virtue of 28 U.S.C. §§ 28-1331 and 42 U.S.C. § 12188 and 28 U.S.C. § 1367.

7. Plaintiff brings this action as a private attorney general who has been personally subjected to discrimination on the basis of his disability, *see* 42 U.S.C.12188 and 28 CFR §36.501.

8. This Court has continuing subject matter jurisdiction by virtue of, *inter alia*, Plaintiff's claim for equitable nominal damages.

9. Venue is proper pursuant to 28 U.S.C. § 1391.

10. The ADAAG violations in this Verified Complaint relate to barriers to Plaintiffs mobility. This impairs Plaintiff's full and equal access to the Hotel which, in turn, constitutes discrimination satisfying the "injury in fact" requirement of Article III of the United States Constitution.

11. Plaintiff is deterred from visiting the Hotel based on Plaintiff's knowledge that the Hotel is not ADA or State Law compliant as such compliance relates to Plaintiff's disability.

12. Plaintiff intends to visit Defendant's Hotel at a specific time when the Defendant's noncompliant Hotel becomes fully compliant with ADAAG; just as a disabled individual who intends to return to a noncompliant facility suffers an imminent injury from the facility's existing or imminently threatened noncompliance with the ADA, a plaintiff who is deterred from patronizing a hotel suffers the ongoing actual injury of lack of access to the Hotel.

COUNT ONE
Violation of Plaintiff's Civil Rights under the ADA

13. Plaintiff realleges all allegations heretofore set forth.

14. By virtue of his disability, Plaintiff requires an ADA compliant lodging facility particularly applicable to his mobility, both ambulatory and wheelchair assisted.

15. Plaintiff intended to visit California Wine Country and therefore, reviewed hotel booking websites as documented in Addendum A which is by this reference incorporated herein for all purposes.

16. Plaintiff became aware that third party booking websites disclosed general availability and description of Defendant's Hotel. Third Party booking websites referenced here are more fully documented in Addendum A which is by this reference incorporated herein.

17. Third party booking websites failed to identify and describe mobility related accessibility features and guest rooms offered through its reservations service in enough detail to reasonably permit Plaintiff to assess independently whether Defendant's Hotel meets his accessibility needs as more fully documented in Addendum A.

18. Third party booking websites also failed to make reservations for accessible guest rooms available in the same manner as individuals who do not need accessible rooms. *See Addendum A.*

19. Thereafter, Plaintiff became aware that Defendant's 1st party booking website failed to identify and describe mobility related accessibility features and guest rooms offered through its reservations service in enough detail to reasonably permit Plaintiff to assess independently whether Defendant's Hotel meets his accessibility needs as more fully documented. *See Addendum A.*

20. Plaintiff also became aware that Defendant's 1st party booking website failed to make reservations for accessible guest rooms available in the same manner as individuals who do not need accessible rooms. *See Addendum A.*

1 21. Plaintiff thereafter reviewed Defendant's online information relating to accessibility
2 or lack thereof, including in particular photographs of the amenities at the Hotel all as
3 more fully documented in Addendum A.

4 22. Online information relating to accessibility or lack thereof disclosed architectural
5 barriers to accessibility as more fully documented in Addendum A.

6 23. Defendant has violated the ADA by denying Plaintiff equal access to its public
7 accommodation on the basis of his disability as outlined above and as outlined in
8 Addendum A.

9 24. The ADA violations described in Addendum A relate to Plaintiff's disability and
10 interfere with Plaintiff's full and complete enjoyment of the Hotel.

11 25. The removal of accessibility barriers listed above is readily achievable.

12 26. As a direct and proximate result of ADA Violations, Defendant's failure to remove
13 accessibility barriers prevented Plaintiff from equal access to the Defendant's public
14 accommodation.

WHEREFORE, Plaintiff prays for all relief as follows:

15 A. Relief described in 42 U.S.C. §2000a – 3; and

16 B. Relief described in 42 U.S.C. § 12188(a) and (b) and, particularly -

17 C. Injunctive relief order to alter Defendant's place of public accommodation to
18 make it readily accessible to and usable by ALL individuals with disabilities;
19 and

20 D. Requiring the provision of an auxiliary aid or service, modification of a
21 policy, or provision of alternative methods, to the extent required by
22 Subchapter III of the ADA; and

23 E. Equitable nominal damages; and

24 F. For costs, expenses and attorney's fees; and

25 G. All remedies provided for in 28 C.F.R. 36.501(a) and (b).

26
27 **COUNT TWO**

28 **(Violation of the California Unruh Civil Rights Act, Cal. Civ. Code §§51, 52)**

1 27. Plaintiff realleges all allegations heretofore set forth.

2 28. Plaintiff intended to visit California Wine Country area and spend a night there.

3 29. Plaintiff became aware that 3rd party booking websites disclosed general availability
4 and description of Defendant's Hotel. 3rd Party booking website referenced here is
5 more fully discussed in Addendum A which is by this reference incorporated herein.

6 30. 3rd party booking website failed to identify and describe mobility related accessibility
7 features and guest rooms offered through its reservations service in enough detail to
8 reasonably permit Plaintiff to assess independently whether Defendant's Hotel meets
9 his accessibility needs as more fully disclosed in Addendum A.

10 31. Third party booking websites also failed to make reservations for accessible guest
11 rooms available in the same manner as individuals who do not need accessible rooms.
12 Addendum A.

13 32. Thereafter, Plaintiff became aware that Defendant's 1st party booking website failed
14 to identify and describe mobility related accessibility features and guest rooms offered
15 through its reservations service in enough detail to reasonably permit Plaintiff to
16 assess independently whether Defendant's Hotel meets his accessibility needs as more
17 fully disclosed in Addendum A.

18 33. Plaintiff also became aware that Defendant's 1st party booking website failed to make
19 reservations for accessible guest rooms available in the same manner as individuals
20 who do not need accessible rooms. Addendum A.

21 34. Plaintiff subsequently declined to book a room at the Hotel.

22 35. Defendant has violated the Unruh by denying Plaintiff equal access to its public
23 accommodation on the basis of his disability as outlined above.

24 36. Unruh provides for declaratory and monetary relief to "aggrieved persons" who suffer
25 from discrimination on the basis of their disability.

26 37. Plaintiff has been damaged by the Defendant's non-compliance with Unruh and is
27 thereby aggrieved.
28

38. Pursuant to Cal Civ. Code §52, Plaintiff is further entitled to such other relief as the Court considers appropriate, including monetary damages in an amount to be proven at trial, but in no event less than \$4,000.00 per encounter with each barrier to accessibility.

39. Pursuant to Unruh, Plaintiff is entitled to costs and expenses in an amount to be proven at trial.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- a. A Declaratory Judgment that at the commencement of this action Defendant was in violation of the specific requirements of Unruh; and
- b. Irrespective of Defendants "voluntary cessation" of the ADA violation, if applicable, a permanent injunction pursuant to Unruh which directs Defendant to take all steps necessary to bring its accommodation into full compliance with the requirements set forth in the Unruh, and its implementing regulations, so that the Hotel facilities are fully accessible to, and independently usable by, disabled individuals, and which further directs that the Court shall retain jurisdiction for a period to be determined after Defendant certifies that its facilities are fully in compliance with the relevant requirements of the Unruh to ensure that Defendant has adopted and is following an institutional policy that will in fact cause Defendant to remain fully in compliance with the law; and
- c. Irrespective of Defendants "voluntary cessation" of the ADA violation, if applicable, the payment of costs of suit; and
- d. Order closure of the Defendant's place of public accommodation until Defendant has fully complied with the Unruh; and
- e. For damages in an amount no less than \$4,000.00 per encounter with barrier; and
- f. For treble damages pursuant to Cal Civ. Code. §3345.
- g. The provision of whatever other relief the Court deems just, equitable and appropriate.

COUNT THREE

(Violation of the California Disabled Persons Act, Cal. Civ. Code §§54-54.3)

40. Plaintiff realleges all allegations heretofore set forth.

41. Defendant has violated the DPA by denying Plaintiff equal access to its public accommodation on the basis of his disability as outlined above.

42. The DPA provides for monetary relief to “aggrieved persons” who suffer from discrimination on the basis of their disability.

43. Plaintiff has been aggrieved by the Defendant’s non-compliance with the DPA.

44. Pursuant to the DPA, Plaintiff is further entitled to such other relief as the Court considers appropriate, including monetary damages in an amount to be proven at trial, but in no event less than \$1,000.00. Cal. Civ. Code § 54.3.

45. Pursuant to the DPA, Plaintiff is entitled to costs in an amount to be proven at trial. Cal. Civ. Code § 54.3.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- a. A Declaratory Judgment that at the commencement of this action Defendant was in violation of the specific requirements of Unruh; and
- b. Irrespective of Defendants “voluntary cessation” of the ADA violation, if applicable, a permanent injunction pursuant to Unruh which directs Defendant to take all steps necessary to bring its facilities into full compliance with the requirements set forth in the Unruh, and its implementing regulations, so that the facilities are fully accessible to, and independently usable by, disabled individuals as required by law, and which further directs that the Court shall retain jurisdiction for a period to be determined after Defendant certifies that its facilities are fully in compliance with the relevant requirements of the Unruh to ensure that Defendant has adopted and is following an institutional policy that will in fact cause Defendant to remain fully in compliance with the law; and
- c. Irrespective of Defendants “voluntary cessation” of the ADA violation, if applicable, the payment of costs of suit; and

- d. Order closure of the Defendant's place of public accommodation until Defendant has fully complied with the DPA; and
- e. For damages in an amount no less than \$1,000.00 per violation per encounter; and
- f. For treble damages pursuant to Cal Civ. Code. §3345.
- g. The provision of whatever other relief the Court deems just, equitable and appropriate.

COUNT FOUR

Negligence

46. Plaintiff realleges all allegations heretofore set forth.

47. Defendant had a duty to Plaintiff to remove ADA accessibility barriers so that Plaintiff as a disabled individual would have full and equal access to the public accommodation.

48. Defendant breached this duty.

49. Defendant is or should be aware that, historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem¹.

50. Defendant knowingly and intentionally participated in this historical discrimination against Plaintiff, causing Plaintiff damage.

51. Discrimination against individuals with disabilities persists in the use and enjoyment of critical public accommodations².

52. Defendant's knowing and intentional persistence in discrimination against Plaintiff is alleged, causing Plaintiff damage.

53. Individuals with disabilities, including Plaintiff, continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria,

¹ 42 U.S.C. § 12101(a)(2)

² 42 U.S.C. §12101(a)(3)

- 1 segregation, and relegation to lesser services, programs, activities, benefits, jobs, or
- 2 other opportunities³.
- 3 54. Defendant's knowing and intentional discrimination against Plaintiff reinforces above
- 4 forms of discrimination, causing Plaintiff damage.
- 5 55. Census data, national polls, and other studies have documented that people with
- 6 disabilities, as a group, occupy an inferior status in our society, and are severely
- 7 disadvantaged socially, vocationally, economically, and educationally⁴.
- 8 56. Defendant's knowing and intentional discrimination has relegated Plaintiff to an
- 9 inferior status in society, causing Plaintiff damage.
- 10 57. The Nation's proper goals regarding individuals with disabilities are to assure equality
- 11 of opportunity, full participation, independent living, and economic self-sufficiency
- 12 for such individuals⁵.
- 13 58. Defendant's knowing, and intentional discrimination has worked counter to our
- 14 Nation's goals of equality, causing Plaintiff damage.
- 15 59. Continued existence of unfair and unnecessary discrimination and prejudice denies
- 16 people with disabilities the opportunity to compete on an equal basis and to pursue
- 17 those opportunities for which our free society is justifiably famous, and costs the
- 18 United States billions of dollars in unnecessary expenses resulting from dependency
- 19 and nonproductivity⁶.
- 20 60. Defendant's knowing and intentional unfair and unnecessary discrimination against
- 21 Plaintiff demonstrates Defendant's knowing and intentional damage to Plaintiff.
- 22 61. Defendant's breach of duty caused Plaintiff damages including, without limitation,
- 23 the feeling of segregation, discrimination, relegation to second class citizen status the
- 24 pain, suffering and emotional damages inherent to discrimination and segregation and
- 25 other damages to be proven at trial.
- 26 62. By violating Plaintiff's civil rights, Defendant engaged in intentional, aggravated and
- 27 outrageous conduct.

³ 42 U.S.C. §12101(a)(5)

⁴ 42 U.S.C. §12101(a)(6)

⁵ 42 U.S.C. §12101(a)(7)

⁶ 42 U.S.C. §12101(a)(8)

1 63. The ADA has been the law of the land since 1991, but Defendant engaged in a
2 conscious action of a reprehensible character, that is, Defendant denied Plaintiff his
3 civil rights, and cause him damage by virtue of segregation, discrimination, relegation
4 to second class citizen status the pain, suffering and emotional damages inherent to
5 discrimination and segregation and other damages to be proven at trial

6 64. Defendant either intended to cause injury to Plaintiff or defendant consciously
7 pursued a course of conduct knowing that it created a substantial risk of significant
8 harm to Plaintiff.

9 65. Defendant is liable to Plaintiff for punitive damages in an amount to be proven at trial
10 sufficient, however, to deter this Defendant and others similarly situated from
11 pursuing similar acts.

12 **WHEREFORE**, Plaintiff prays for relief as follows:


- 13 A. For finding of negligence; and
14 B. For damages in an amount to be proven at trial; and
15 C. For punitive damages to be proven at trial; and
16 D. For such other and further relief as the Court may deem just and proper.

17 **REQUEST FOR TRIAL BY JURY**

18 Plaintiff respectfully requests a trial by jury in issues triable by a jury.

19 RESPECTFULLY SUBMITTED this August 5, 2019

20 **PETER STROJNIK**

21 
22 Plaintiff